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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5580 OF 2004

Shri Ali Raza Mohammed Usman Gani ... Petitioner

Vs.

Caprihans India Ltd. & Ors. ... Respondents

Ms. Anita Bhaktwani for the petitioner.

None for the respondents.

CORAM: ABHAY S. OKA, J.

DATED: 8TH DECEMBER, 2004.

P.C.:-

1. Heard the learned counsel for the petitioner.

2. By this petition filed under Article 227 of the Constitution of India, the challenge is to the order dated 15/6/2004 passed by the IInd Jt. Civil Judge, Senior Division, Thane. The grievance of the petitioner is that without impleading the petitioner as a party defendant in the pending suit, the order has been passed appointing the Court Commissioner, which will seriously affect the petitioner. My attention has been invited to paragraph 3 of the impugned order.

3. Prima facie, there is some substance in the contention raised by the learned counsel for the petitioner. However, I find that the petitioner has not

approached the learned trial judge with appropriate application praying for impleading him as a party to the suit and/or for setting aside the order dated 15/6/2004. If such remedy is available to the petitioner, in my view, the writ petition under Article 227 of the Constitution of India need not be entertained.

4. In view of this position, the writ petition is not entertained. The writ petition is rejected by keeping the remedy of the petitioner to approach the trial court, open. If the commission work is not carried out till today, the same shall not be carried out for a period of six weeks from today to enable the petitioner to file appropriate application.

5. All concerned to act on ordinary copy of this order duly authenticated by the Sheristedar of this court.

(ABHAY S. OKA, J.)